

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

DEBORAH FABER,

Movant,

vs.

UNITED STATES OF AMERICA.

No. C10-4095-LRR
No. CR08-4060-LRR

ORDER


This matter appears before the court on Deborah Faber's motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 (docket no. 1). Deborah Faber ("the movant") filed such motion on October 18, 2010.

Having conducted the required review under Rule 4(b) of the Rules Governing Section 2255 Proceedings, the court notes that it is highly unlikely that relief is warranted in light of the fact that the Eighth Circuit Court of Appeals already enforced the movant's appeal waiver and the fact that the movant agreed not to file an action under 28 U.S.C. § 2255. Nonetheless, the court concludes that summary dismissal of the movant's § 2255 motion is not appropriate at this time. *See Blackledge v. Allison*, 431 U.S. 63, 75-76, 97 S. Ct. 1621, 52 L. Ed. 2d 136 (1977) (making clear that summary dismissal is appropriate where the allegations are vague or conclusory, palpably incredible, or patently frivolous or false). Accordingly, the government is directed to file either an answer in accordance with Rule 5(b) of the Rules Governing Section 2255 Proceedings or an appropriate motion under Federal Rule of Civil Procedure 12 by no later than November 26, 2010. *See* Rule 4(b) of the Rules Governing Section 2255 Proceedings. If the government elects to file an answer, the movant may file a reply by no later than December 10, 2010. *See* Rule 5(d)

of the Rules Governing Section 2255 Proceedings.¹ In the event that an answer is filed by the government, the court will establish by subsequent order a briefing schedule.

IT IS SO ORDERED.

DATED this 27th day of October, 2010.



LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

¹ The court notes that, as a general matter, a movant may not bring up new matters in a reply brief. *See McGhee v. Pottawattamie County*, 547 F.3d 922, 929 (8th Cir. 2008); *Barham v. Reliance Std. Life Ins. Co.*, 441 F.3d 581, 584 (8th Cir. 2006); *see also* N.D. Iowa L. R. 7(g) (allowing a reply brief to be filed within 7 days after a responsive pleading is filed and explaining that a reply may assert newly-decided authority or respond to new or unanticipated arguments).